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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1933

No. 650

HARTFORD ACCIDENT & INDEMNITY COMPANY AND UNITED STATES FIDELITY & GUARANTY COMPANY, APPELLANTS,

vs.

DELTA & PINE LAND COMPANY.

APPEAL FROM THE SUPREME COURT OF THE STATE OF MISSISSIPPI.

FILED DECEMBER 18, 1933.

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[fol. 2]

IN CIRCUIT COURT OF BOLIVAR COUNTY, FIRST JUDICIAL DISTRICT, OCTOBER TERM, 1931

No. 6550

DELTA AND PINE LAND CO. OF MISSISSIPPI, Plaintiff,

vs.

HARTFORD ACCIDENT AND INDEMNITY COMPANY, Defendant

DECLARATION—Filed Sept. 17, 1931

Comes Delta & Pine Land Co. of Mississippi, a corporation duly incorporated under the laws of the State of Mississippi, and having its principal place of business in the Town of Scott, First Judicial District of Bolivar County, Mississippi, by Sillers & Roberts, its attorneys, and complains of the Hartford Accident and Indemnity Company, a Corporation duly incorporated under the laws of the State of Connecticut, and having its principal place of Business in the City of Hartford, Connecticut, and qualified and authorized to do business in the State of Mississippi by complying with the laws of the State of Mississippi in such cases made and provided, on a plea of trespass on the case on promises, and for cause of action shows:

That on or about the 1st day of January, 1928, the Delta & Pine Land Co. of Mississippi applied to the defendant, the Hartford Accident and Indemnity Company, for a fidelity bond in which bond, for valuable considerations, being agreed premiums as provided for in the bond hereinafter referred to, which said premiums were paid in cash by the plaintiff to the defendant, the said Hartford Accident and Indemnity Company executed and delivered to the said Plaintiff a fidelity bond with schedule attached as a part thereof under the terms and provisions of which the defendant promised and bound itself to pay to the said Plaintiff within sixty days after satisfactory proof thereof, [fol. 3] such pecuniary loss as the Delta & Pine Land Co.

of Mississippi shall have sustained of money or other personal property (including money or other personal property for which the Delta & Pine Land Co. of Mississippi was responsible) through the fraud, dishonesty, forgery, theft, embezzlement, wrongful abstraction or wilful misapplication committed directly or in connivance with others by any of the employees named upon the schedule attached to the said bond, in any position, anywhere, during the period commencing with the respective dates set opposite the names of the employees in such schedule, and ending with the termination of the suretyship for any employee by his dismissal or retirement from the service of the Delta & Pine Lands Co. of Mississippi, by the discovery of loss under said bond or by cancellation by the Delta & Pine Land Co. of Mississippi or the Hartford Accident and Indemnity Company, a copy of which said bond and schedule are attached hereto as Exhibit "A" and made a part hereof.

That on or about the 24th day of February, 1928, upon the application of the plaintiff and in consideration of the premiums paid by the plaintiff to the defendant therefor, the said defendant executed and delivered unto the plaintiff a rider which was and is attached to said bond as a part thereof, under the terms of which the said bond was extended to cover the liabilities imposed under former bonds described therein, a copy of which rider is filed herewith as Exhibit "B" hereto and made a part hereof.

That on or about the 1st day of January, 1929, upon application of the plaintiff and in consideration of the agreed premiums paid by the plaintiff to the defendant as provided for in said bond Exhibit "A", the said defendant, under the terms and provisions of said bond Exhibit "A" executed and delivered unto said plaintiff an additional schedule listing names and employees, dates and amounts [fol. 4] of liability covering each, which was and is now attached to said bond as a part thereof, a copy of which said schedule is filed herewith as Exhibit "C" hereto and made a part hereof.

That on or about the 1st day of January, 1929, upon application of the plaintiff and in consideration of the agreed premiums paid by the plaintiff to the defendant as provided for in said bond Exhibit "A", the said defendant, under the terms and provisions of said bond Exhibit "A"

executed and delivered unto said plaintiff an additional schedule listing names and employees, dates and amount of liability covering each, which was and is now attached to said bond as a part thereof, a copy of which said schedule is filed herewith as Exhibit "D" hereto and made a part hereof.

That on or about the 4th day of June, 1929, upon application of the plaintiff and in consideration of the agreed premiums paid by the plaintiff to the defendant as provided for in said bond Exhibit "A", the said defendant, under the terms and provisions of said bond Exhibit "A" executed and delivered unto said plaintiff an additional schedule listing names and employees, dates and amount of liability covering each, which was and is now attached to said bond as a part thereof, a copy of which said schedule is filed herewith as Exhibit "E" hereto and made a part hereof.

Plaintiff alleges that H. H. Harris who was employed as Treasurer of the defendant company was one of the employees named on the schedules attached to said bond and on the schedule Exhibit "C" attached hereto; that the amount set opposite the name of H. H. Harris was Twenty-Five Thousand ($25,000.00) Dollars, and the date set opposite the name of the said H. H. Harris was January 1st, 1928, and January 1st, 1929, as shown by said Exhibits [fol. 5] "A" and "C", and that, therefore, the liability of the Hartford Accident and Indemnity Company on account of defalcations of H. H. Harris covered all amounts of defalcations as aforesaid to the extent of $25,000.00.

Plaintiff alleges that said bond was in full force and effect beginning on the 1st day of January, 1928, up to and including the 1st day of January, 1930, and at all times when the defalcations herein complained of were made, occurred and took place.

Plaintiff alleges that it sustained pecuniary loss of money through the fraud, dishonesty, theft, embezzlement, wrongful abstraction and/or wilful misapplication by the said H. H. Harris of the funds of the said plaintiff on account of the following transactions;

On May 9th, 1929, the said H. H. Harris drew a check in the amount of $40.00 on the First National Bank, Memphis, Tennessee, which check was payable to Delta & Pine Land Co. and which check he delivered to the plaintiff with

the representation that the same would be paid upon presentation to the bank upon which it was drawn and which said check was cashed by the plaintiff, and the said Harris did then and there obtain from the plaintiff the sum of $40.00 lawful money of the United States of the value of $40.00.

On June 4th, 1929, the said H. H. Harris drew a check in the amount of $141.89 on the First National Bank, Memphis, Tennessee, which check was payable to Delta & Pine Land Co., and which check he delivered to the plaintiff with the representation that the same would be paid upon presentation to the bank upon which it was drawn and which said check was cashed by the plaintiff, and the said Harris did then and there obtain from the plaintiff the sum of $141.89 lawful money of the United States of the value of $141.89.

[fol. 6] On June 8th, 1929, the said H. H. Harris drew a check in the amount of $25.00 on the First National Bank, Memphis, Tennessee, which check was payable to Delta & Pine Land Co., and which check he delivered to the plaintiff with the representation that the same would be paid upon presentation to the bank upon which it was drawn and which said check was cashed by the plaintiff, and the said Harris did then and there obtain from the plaintiff the sum of $25.00 lawful money of the United States of the value of $25.00.

On July 3rd, 1929, the said H. H. Harris drew a check in the amount of $161.26 on the First National Bank, Memphis, Tennessee, which check was payable to Delta & Pine Land Co., and which check he delivered to the plaintiff with the representation that the same would be paid upon presentation to the bank upon which it was drawn and which said check was cashed by the plaintiff, and the said Harris did then and there obtain from plaintiff the sum of $161.26 lawful money of the United States of the value of $161.26.

On July 10th, 1929, the said H. H. Harris drew a check in the amount of $35.05 on the First National Bank, Memphis, Tennessee, which check was payable to S. L. Davenport, and which check he delivered to the plaintiff with the representation that the same would be paid upon presentation to the bank upon which it was drawn and which said check was cashed by the plaintiff, and the said

Harris did then and there obtain from the plaintiff the sum of $35.05 lawful money of the United States of the value of $35.05.

On July 12th, 1929, the said H. H. Harris drew a check in the amount of $100.00 on the First National Bank, Memphis, Tennessee, which check was payable to Delta & Pine Land Co., and which check he delivered to the plain-
[fol. 7] tiff with the representation that the same would be paid upon presentation to the bank upon which it was drawn and which said check was cashed by the plaintiff, and the said Harris did then and there obtain from the plaintiff the sum of $100.00 lawful money of the United States of the value of $100.00.

On July 18th, 1929, the said H. H. Harris drew a check in the amount of $12.96 on the Commercial Bank, Greenville, Mississippi, which check was payable to Delta & Pine Land Co., and which check he delivered to the plaintiff with the representation that the same would be paid upon presentation to the bank upon which it was drawn and which said check was cashed by the plaintiff, and the said Harris did then and there obtain from the plaintiff the sum of $12.96 lawful money of the United States of the value of $12.96.

On July 26th, 1929, the said H. H. Harris drew a check in the amount of $50.00 on the First National Bank, Memphis, Tennessee, which check was payable to Delta & Pine Land Co. and which check he delivered to the plaintiff with the representation that the same would be paid upon presentation to the Bank upon which it was drawn and which said check was cashed by the plaintiff, and the said Harris did then and there obtain from the plaintiff the sum of $50.00 lawful money of the United States of the value of $50.00.

On August 7th, 1929, the said H. H. Harris drew a check in the amount of $18.74 on the First National Bank, Memphis, Tennessee, which check was payable to S. L. Deavenport, and which check he delivered to the plaintiff with the representation that the same would be paid upon presentation to the bank upon which it was drawn and which said check was cashed by the plaintiff, and the said Harris did then and there obtain from the plaintiff the
[fol. 8] sum of $18.74 lawful money of the United States of the value of $18.74.

On August 8th, 1929, the said H. H. Harris drew a check in the amount of $75.00 on the First National Bank, Memphis, Tennessee, which check was payable to Delta & Pine Land Co., and which check he delivered to the plaintiff with the representation that the same would be paid upon presentation to the bank upon which it was drawn and which said check was cashed by the plaintiff, and the said Harris did then and there obtain from the plaintiff the sum of $75.00 lawful money of the United States of value of *$147.84.*

On August 8th, 1929, the said H. H. Harris drew a check in the amount of $147.84 on the First National Bank, Memphis, Tennessee, which check was payable to Delta & Pine Land Co., and which check he delivered to the plaintiff with the representation that the same would be paid upon presentation to the bank upon which it was drawn and which said check was cashed by the plaintiff, and the said Harris did then and there obtain from the plaintiff the sum of $147.84 lawful money of the United States of the value of $147.84.

On August 14th, 1929, the said H. H. Harris drew a check in the amount of $104.16 on the First National Bank, Memphis, Tennessee, which check was payable to Delta & Pine Land Co., and which check he delivered to the plaintiff with the representation that the same would be paid upon presentation to the bank upon which it was drawn and which said check was cashed by the plaintiff, and the said Harris did then and there obtain from the plaintiff the sum of $104.16 lawful money of the United States of the value of $104.16.

[fol. 9] On September 12th, 1929, the said H. H. Harris drew a check in the amount of $333.66 on the First National Bank, Memphis, Tennessee, which check was payable to Delta & Pine Land Co., and which check he delivered to the plaintiff with the representation that the same would be paid upon presentation to the bank upon which it was drawn and which said check was cashed by the plaintiff, and the said Harris did then and there obtain from the plaintiff the sum of $333.66 lawful money of the United States of the value of $333.66.

On September 16th, 1929, the said H. H. Harris drew a check in the amount of $100.00 on the First National Bank, Memphis, Tennessee, which check was payable to Delta &

Pine Land Co., and which check he delivered to the plaintiff with the representation that the same would be paid upon presentation to the bank upon which it was drawn and which said check was cashed by the plaintiff and the said Harris did then and there obtain from the plaintiff the sum of $100.00 lawful money of the United States of value of $100.00.

On October 5th, 1929, the said H. H. Harris drew a check in the amount of $100.00 on the First National Bank, Memphis, Tennessee, which check was payable to Delta & Pine Land Co., and which check he delivered to plaintiff with the representation that the same would be paid upon presentation to the bank upon which it was drawn and which said check was cashed by the plaintiff, and the said Harris did then and there obtain from the plaintiff the sum of $100.00 lawful money of the United States of the value of $100.00.

On October 7th, 1929, the said H. H. Harris drew a check in the amount of $236.69 on the First National Bank, Memphis, Tennessee, which check was made payable to [fol. 10] Delta & Pine Land Co., and which check he delivered to the plaintiff with the representation that the same would be paid upon presentation to the bank upon which it was drawn and which said check was cashed by the plaintiff, the said Harris did then and there obtain from the plaintiff the sum of $236.69 lawful money of the United States of the value of $236.69.

On October 19th, 1929, the said H. H. Harris drew a check in the amount of $20.00 on the Bank of Commerce, Memphis, Tennessee, which check was payable to Delta & Pine Land Co., and which check he delivered to the plaintiff with the representation that the same would be paid upon presentation to the bank upon which it was drawn and which said check was cashed by the plaintiff, and the said Harris did then and there obtain from the plaintiff the sum of $20.00 lawful money of the United States of the value of $20.00.

On November 6th, 1929, the said H. H. Harris drew a check in the amount of $30.00 on the Bank of Commerce, Memphis, Tennessee, which check was payable to S. L. Deavenport, and which check he delivered to the plaintiff with the representation that the same would be paid upon presentation to the bank upon which it was drawn and

which said check was cashed by the plaintiff, and the said Harris did then and there obtain from the plaintiff the sum of $30.00 lawful money of the United States of the value of $30.00.

On November 14th, 1929, the said H. H. Harris drew a check in the amount of $290.18 on the Bank of Commerce, Memphis, Tennessee, which check was payable to Delta & Pine Land Co., and which check he delivered to the plaintiff with the representation that the same would be paid upon presentation to the bank upon which it was drawn and which said check was cashed by the plaintiff, and the [fol. 11] said Harris did then and there obtain from the plaintiff the sum of $290.18 lawful money of the United States of the value of $290.18.

On December 12th, 1929, the said H. H. Harris drew a check in the amount of $40.00 on the Bank of Commerce, Memphis, Tennessee, which check was payable to Delta & Pine Land Co., and which check he delivered to the plaintiff with the representation that the same would be paid upon presentation to the bank upon which it was drawn and which said check was cashed by the plaintiff, and said Harris did then and there obtain from the plaintiff the sum of $40.00 lawful money of the United States of the value of $40.00.

On December 12th, 1929, the said H. H. Harris drew a check in the amount of $280.67 on the Bank of Commerce, Memphis, Tennessee, which check was payable to Delta & Pine Land Co., and which check he delivered to the plaintiff with the representation that the same would be paid upon presentation to the bank upon which it was drawn and which said check was cashed by the plaintiff, and the said Harris did then and there obtain from the plaintiff the sum of $280.67 lawful money of the United States of the value of $280.67.

On December 20th, 1929, the said H. H. Harris drew a check in the amount of $100.00 on the Bank of Commerce, Memphis, Tennessee, which check was payable to Delta & Pine Land Co., and which check he delivered to the plaintiff with the representation that the same would be paid upon presentation to the bank upon which it was drawn and which said check was cashed by the plaintiff, and the said Harris did then and there obtain from the plaintiff the sum of $100.00 lawful money of the United States of the value of $100.00.

[fol. 12] Plaintiff alleges that the said H. H. Harris was Treasurer of the said Delta & Pine Land Co. of Mississippi and as such was entrusted with the duty of presenting and collecting the said checks for the use and benefit of the said plaintiff, and when said checks were sent to him by the Cashier he destroyed said checks and did not forward them to the Bank on which they were drawn for collection, but appropriated all of the said funds to his own use and thereby defrauded the said plaintiff of said respective amounts totaling in the aggregate the sum of $2,443.10, all of which was in violation of the duties and responsibilities entrusted to and required of him by his aforesaid employment with the plaintiff, and all of which wese covered by and under the provisions of the aforesaid Fidelity Bond executed by the defendant and delivered to the plaintiff, and by reason of which the said defendant became liable to and promised to pay to the plaintiff the said sums and/or sum of which it was so defrauded by its said employee, the said Harris.

Plaintiff alleges that on September 5th, 1929, the said H. H. Harris fictitiously entered as a receipt in the cash book of the said plaintiff a check dated September 5th, 1929, and in the amount of $260.69, and credited his personal account with said sum of money in the accounts payable ledger; that the said plaintiff did not receive said check but that said entries made by the said H. H. Harris were false entries, and by reason of which and as a result thereof the said Harris fraudulently obtained of and from the said plaintiff the sum of $260.69 of lawful money of the United States of the value of $260.69, all of which he appropriated to his own use thus defrauding the said plaintiff of said sum of money resulting in a loss to it, the said plaintiff, of the said sum of $260.69, and by reason whereof under [fol. 13] the terms and provisions of said fidelity bond, Exhibit "A", and schedules attached thereto aforementioned, said defendant became liable to and promised to pay to the plaintiff the said sum of $260.69.

Plaintiff alleges that all of the aforesaid defalcations, frauds, etc., and the loss resulting to plaintiff therefrom occurred in the First Judicial District of Bolivar County, Mississippi, and that by reason of the aforementioned acts as aforesaid the said plaintiff has sustained pecuniary loss in the sum of $2,703.79.

Plaintiff alleges that beginning on the 1st day of January, 1929, and on the date of each and every one of the aforesaid defalcations hereinabove complained of, and at all times since, the said defendant Hartford Accident and Indemnity Company was, and is now, duly qualified and licensed to do, and was and is now doing business including indemnifying insurance business as covered by the fidelity bond Exhibit "A" and schedules attached, in the First Judicial District of Bolivar County, Mississippi, having complied with the laws of the State of Mississippi in such cases made and provided.

Plaintiff alleges that the dishonest acts of the said H. H. Harris above complained of were discovered by it on or about the 20th day of May, 1931; that immediately upon the discovery of said dishonest acts of the said Harris the plaintiff gave written notice thereof to the Hartford Accident and Indemnity Company at its home office; that affirmative proof of loss under oath, together with full particulars of such loss, were filed with the said defendant at its Home Office within three (3) Months after such discovery, a copy of said affirmative proof of loss being attached hereto as Exhibit "F" and made a part hereof, and that this suit is [fol. 14] brought and filed before the expiration of twelve (12) months after the filing of said proof of loss.

Plaintiff alleges that it has at all times kept, conformed and complied with all of the terms, provisions and conditions of the said bond Exhibit "A" and schedules thereto attached, upon its part to be by it kept and performed.

Plaintiff alleges that notwithstanding such performance by it and notwithstanding the fact that under the terms and provisions of the said bond Exhibit "A" and schedules thereto attached, the defendant became liable to and promised to pay to it, the said plaintiff, the aforesaid sums of money resulting in the total loss to it of $2,703.79, and although the time for payment of said sum of money in and by said bond promised by said defendant to be paid to the said plaintiff has long since lapsed and the said sum is now due and payable to the plaintiff under and by the terms and provisions of said bond, and notwithstanding the fact that said bond was in full force and effect at the time of the defalcations as hereinabove alleged and is now in full force and effect, the said defendant although often requested has not paid said sum or any part thereof to the plaintiff, but

has wholly neglected and refuses so to do to the damage of the plaintiff in the sum of $2,703.79, with lawful interest.

Wherefore, Plaintiff brings this suit and demands of and from the said defendant, Hartford Accident and Indemnity Company, the sum of $2,703.79 with lawful interest and all costs of this suit.

Sillers & Roberts, Attorneys for Plaintiff.

[fol. 15] EXHIBIT "A" TO DECLARATION

Fidelity Department

Schedule Bond B. No. 103

Hartford Accident and Indemnity Company, Hartford, Connecticut

The Hartford Accident and Indemnity Company (hereinafter called the Surety), in consideration of an agreed premium, binds itself to pay to Delta & Pine Land Co., of Mississippi, and/or Delta Farm Co., and/or Empire Plantation Co. (as their interest may appear) (hereinafter called the Employer), within sixty (60) days after satisfactory proof thereof, such pecuniary loss as the Employer shall have sustained of money or other personal property (including money of other personal property for which the Employer is responsible) through the fraud, dishonesty, forgery, theft, embezzlement, wrongful abstraction of wilful misapplication committed directly or in connivance with others by any of the employees named upon the schedule attached hereto and made a part hereof, in any position, anywhere, during the period commencing with the respective dates set opposite the names of the employees in such schedule, and ending with the termination of the suretyship for any employee by his dismissal or retirement from the service of the Employer, by the discovery of loss hereunder, or by cancellation by the Employer or the Surety.

The liability of the Surety on account of any one employee shall not exceed the amount set opposite the employee's name in said schedule. The employer may, during the continuance of this bond, add other employees to said schedule or increase or decrease the amount of suretyship for any employee, by giving written notice to the

[fol. 16] Surety, but such notice shall not be binding on the Surety until the Employer has received the Surety's written acceptance thereof. In the event of such increase or decrease the Surety's liability as respects such employee shall not exceed the scheduled amount in effect as to such employee when the dishonest act of the employee shall have been committed. The Surety's liability shall in no event exceed the maximum amount at any time in effect in said schedule as to such employee.

Upon the discovery by the Employer of any dishonest act on the part of any employee the Employer shall give immediate written notice thereof to the Surety at its Home Office. Affirmative proof of loss under oath, together with full particulars of such loss, shall be filed with the Surety at its Home Office within three (3) months after such discovery.

Any claim hereunder must be duly made upon the Surety within fifteen (15) months after the termination of the Suretyship for the defaulting employee, and no suit, action, or proceeding shall be brought hereunder by the Employer against the Surety after the expiration of twelve (12) months after the filing of proof of loss as above required, or, in case such limitation be void under the law of the place governing the construction hereof, then within the shortest period of limitation permitted by such law.

The Suretyship for any or all employees may be canceled:

(a) By the Surety, by giving thirty days notice of cancellation to the Employer in writing of its desire so to cancel;

(b) By the Employer, by giving notice to the Surety in writing of the Employer's desire so to cancel.

In the event of such cancellation and no claim having been made hereunder, the surety shall refund the unearned premium if any.

[fol. 17] In witness whereof, the Hartford Accident and Indemnity Company has caused this bond to be signed by its duly authorized officers and its corporate seal to be hereunto affixed this 1st day of January, 1928.

Hartford Accident and Indemnity Company, M. F. Dobonia, Attorney-in-fact.

Attest: D. C. Croom.

[fol. 18]

SCHEDULE OF EMPLOYEES

No	Date	Name	Position	Location	Amount	Premium
	1/28	Johnson, Oscar	President	Memphis, Tenn.	$25,000.00	$75.00
	"	Lynes, Roberts	Vice-pres.	"	25,000.00	75.00
	"	Harris, H. H.	Treas.	"	25,000.00	75.00
	"	Toler, A. F.	Sect.	"	25,000.00	75.00
	"	Gallaugher, R. J.	Asst. Treas.	"	10,000.00	30.00
	"	Stout, W. F.	Bookkeeper	"	10,000.00	30.00
	"	Sanders, J. G., Jr.	Clerk	"	2,000.00	6.00
	"	Dye, C. T.	Purchasing Agent	"	2,000.00	6.00
	"	Davenport, S. L.	Office Mgr.	Scott, Miss.	10,000.00	30.00
	"	Miller, W. L.	Cashier	"	10,000.00	30.00
	"	Hendricks, J. F.	Bookkeeper	"	2,000.00	6.00
	"	Hale, J. D.	Store Mgr.	"	5,000.00	15.00
	"	Rippie, Cloise	Asst. Bookkeeper	"	2,000.00	6.00
	"	Hatcher, J. L.	Clerk	"	1,000.00	3.00
	"	Chancellor, E. M.	Clerk	"	1,000.00	3.00
	"	Comegrys, John	Clerk	"	1,000.00	3.00
	"	Sandidge, R. S.	Store Mgr.	Lamont, Miss.	3,000.00	9.00
	"	Warren, Hugh	Store Mgr., Kutaw	Scott, "	2,000.00	6.00
	"	Brenner, Chas., Jr.	Drug store Mgr.	" "	1,000.00	3.00
	"	Love, R. C.	Office Mgr.	Deeson, Miss.	15,000.00	45.00
	"	Caldwell, A. P.	Asst. "	"	2,000.00	6.00
	"	Daws, J. T.	Store "	"	3,000.00	9.00
	"	McGaha, J. J.	" Clerk	"	1,000.00	3.00
	"	Scott, W. B.	" "	"	1,000.00	3.00
	"	Moss, A. N.	Bkkpr-Cashier	Estill, Miss.	5,000.00	15.00
	"	Stafford, V. J.	Store Mgr.	"	4,000.00	12.00
	"	Lowe, Earl	" Clerk	"	1,000.00	3.00
	"	McNeill, T. H.	Plantation Mgr.	"	10,000.00	30.00
	"	Moore, Dave	" "	Lake Cormant, Miss.	5,000.00	15.00

[fol. 19] EXHIBIT "B" TO DECLARATION

Hartford Accident & Indemnity Company,
Hartford, Connecticut

Executed in Duplicate

Rider

To be attached to and form a part of Schedule Fidelity Bond ~~No. 709540,~~ of the Hartford Accident and Indemnity Company (hereinafter called the Surety), covering certain employees of the Delta & Pine Land Co. of Miss. &/or Delta Farms Co., &/or Empire Plantation Company, Memphis, Tenn., as their interests may appear (hereinafter referred to as the new bond).

Whereas the said new bond, has upon its issuance, displaced and cancelled various schedule bonds listed below, executed also by the Hartford Accident & Indemnity Company (hereinafter referred to as the old bonds).

Bond No.	Effective date	Name	Amount of bond
285575	Feb. 24, 1922	Delta & Pine Land Co. of Mississippi	$53,500.00
345264	Dec. 1, 1922	Empire Plantation Company	$20,000.00

Whereas, the old bonds, as of the effective date of the new bond, have been cancelled, or have been terminated by agreement, as is evidenced by the issuance and acceptance of the new bond and this rider.

Now, therefore, it is hereby understood and agreed as follows:

[fol. 20] First. That the new bond shall be construed to cover, subject to its terms, conditions and limitation, any loss under said old bonds caused by any employee covered by the latter, which shall be discovered after the expiration of the period allowed under the old bonds in which claim may be presented after cancellation or termination, and before the expiration of the time limited in the new bond for the discovery of loss or making claim hereunder, and which would have been recoverable under said old bonds had they continued in force, and also under the new bond had such occurred during the currency thereof.

Second. That nothing herein contained shall be construed to render the Surety liable under the new bond for a larger amount on account of such loss or losses under said old bonds that would have been recoverable thereunder had they continued in force, or to increase the time for discovering loss under said old bonds beyond what would have been the time had they continued in force.

Third. That the liability of the surety for a loss under both the old and the new bonds, as to that part of the loss under the old bonds shall not exceed the amount to which it is limited in the second clause of this rider, and as to that part of the loss under the new bond shall not exceed the amount applicable to the employee causing the loss under the new bond, and to the whole loss shall not exceed the amount applicable to the employee causing the loss under either the old bonds or the new bond, whichever may be the larger.

Signed, sealed and dated the 24th day of February, 1928.
Hartford Accident and Indemnity Company, by Ray H. Dexter, Attorney. (Seal.)

Attest: A. C. Strum, Attorney.

[fol. 21] The above is hereby agreed to and accepted.
Delta & Pine Land Co. of Mississippi &/or Delta Farms Co. &/or Empire Plantation Co., by Robert Lynes, Vice-President.

[fol. 22]

EXHIBIT "C" TO DECLARATION

Schedule Bond #709540

Employees of Delta & Pine Land Co., of Mississippi, and/or Delta Farms Co., and/or Empire Plantation Co.

Number	Date	Name	Position	Location	Amount
709540	1-1-29	Johnston, Oscar	President	Memphis, Tenn.	$25,000
"	"	Lynes, Robert	Vice-Pres.	"	25,000
"	"	Harris, H. H.	Treasurer	"	25,000
"	"	Toler, A. F.	Secretary	"	25,000
"	"	Gallaugher, R. J.	Asst. Treas.	"	10,000
"	"	Stout, W. F.	Bookkeeper	"	10,000
"	"	Sanders, J. G., Jr.	Clerk	"	2,000
"	"	Dye, C. T.	Purchasing Agent	"	2,000
"	"	Ready, L. R.	Store Clerk	Scott, Miss.	1,000
"	"	Deavenport, S. L.	Office Mgr.	"	10,000
"	"	Miller, W. L.	Cashier	"	10,000
"	"	Hedricks, J. F.	Bookkeeper	"	2,000
"	"	Rippee, Cloise	Asst. Bookkeeper	"	2,000
"	"	Hale, J. D.	Store Mgr.	"	5,000
"	"	Hatcher, J. L.	Clerk	"	1,000
"	"	Chancellor, E. M.	Clerk	"	1,000
"	"	Comegrys, John	Clerk	"	1,000
"	"	Sandidge, R. S.	Store Mgr.	Lamont, Miss.	3,000
"	"	Warren, Hugh	Store Mgr., Eutaw	Scott, Miss.	2,000
"	"	Brenner, Chas., Jr.	Drug Store Mgr.	"	1,000
"	"	Conn, E. J.	Office Clerk	"	2,000
"	"	Love, R. C.	Office Mgr.	Deeson, Miss.	15,000
"	"	Dawes, J. T.	Store Mgr.	"	3,000
"	"	McGaha, J. J.	" Clerk	"	1,000
"	"	Conner, R. H.	Store "	"	1,000
[fol. 23]					
"	"	Moss, A. N.	Bkkpr-Cashier	Estill, Miss.	5,000
"	"	Stafford, V. J.	Store Mgr.	"	4,000
"	"	Lowe, Earl	" Clerk	"	1,000
"	"	McNeill, T. H.	Plantation Mgr.	"	10,000
				Total penalty	$205,000
				Total premium	615

A line is drawn through the following names: Lyles, Robert; Gallaugher, R. J.; Sanders, J. G., Jr.; Dye, C. T.; Ready, L. R.; Chancellor, E. M.; McGaha, J. J.

[fol. 24] EXHIBIT "D" TO DECLARATION

Acceptance of Change in Schedule of Employees Attached to Schedule Bond No. 709540

Acceptance of Notice No. 1

Dated at Memphis this 1st day of Jan. 1929.

Delta & Pine Land Co., of Mississippi,
Memphis, Tenn.

GENTLEMEN: We acknowledge receipt of your favor of January 1st, 1929, asking that the following changes be made in the Schedule of Employees attached to our Schedule Bond No. 709540, in your favor, expiring Jan. 1st, 1930 Subject to the terms and conditions of said bond, the changes have been made on the records of this company as hereafter set out.

Additions

Effective	Bond	Name	Position	Location	Amt.	Premium debit
5-1-28	709540	E. J. Conn	Office Clerk	Scott, Miss.	$2,000	$4.00
"	"	L. R. Ready	Store Clerk	"	1,000	2.00
"	"	R. H. Conner	" "	Deeson, "	1,000	nil

Deductions

Date terminated					Premium credit
9-1-28	709540	A. P. Caldwell	Deeson, Miss.	$2,000	$2.00
12-28-28	"	W. B. Scott (died)	" "	1,000	nil
1-1-29	"	Dave Moore	Lake Cormant, Miss.	5,000	nil

This acceptance notice is issued with the distinct understanding that the liability of the Hartford Accident and [fol. 25] Indemnity Company shall under no circumstances be cumulative, and shall not exceed the amount of bond in effect as to any employee or employees when the dishonest act of the employee or employees shall have been committed and shall in no event exceed the maximum amount at any time specified as to such employee or employees.

Hartford Accident and Indemnity Company, by
M. F. Dobbins, Attorney-in-Fact. (Seal.)

[fols. 26–31] EXHIBIT "E" TO DECLARATION

Acceptance of Change in Schedule of Employees Attached to Schedule Bond No. 709540

Acceptance of Notice No. 3

Dated at Memphis this 4 day of June 1929.

Delta & Pine Land Co.,
Memphis, Tenn.

GENTLEMEN: We acknowledge receipt of your favor of June 4th, 1929 asking that the following changes be made in the Schedule of Employees attached to our Schedule Bond No. 709540, in your favor, expiring Jan. 1st, 1930 Subject to the terms and conditions of said bond, the changes have been made on the records of this company as hereafter set out.

Additions

Effective date	Bond	Name	Position	Location	Amount	Pre. deb.
6-5-29	347756	W. B. Ware	Manager	Benoit, Miss	$1,000	$1.70
2	"	S. J. Ely	"	" "	1,000	1.00

This acceptance notice is issued with the distinct understanding that the liability of the Hartford Accident and Indemnity Company shall under no circumstances be cumulative, and shall not exceed the amount of bond in effect as to any employee or employees when the dishonest act of the employee or employees shall have been committed, and shall in no event exceed the maximum amount at any time specified as to such employee or employees.

Hartford Accident and Indemnity Company, by
M. F. Dobbins, Attorney-in-Fact. (Seal.)

[fol. 32] IN CIRCUIT COURT FIRST JUDICIAL DISTRICT OF BOLIVAR COUNTY, MISSISSIPPI

[Title omitted]

PLEA—Filed Oct. 19, 1931

Now comes Hartford Accident & Indemnity Company and for plea says that plaintiff should not have its action be-

cause plaintiff before and at the date of the contract of suretyship herein sued upon was doing business in the State of Tennessee and had its principal office at Memphis, in said State, and defendant was also then, as it is now, doing business in the State of Tennessee and had an Agency at Memphis, in said State, and plaintiff through its said office at Memphis, in said State, applied to defendant through its said Agency at Memphis, in said State, for said bond, rider and schedules containing the name of the defaulting employee, H. H. Harris, constituting said contract of suretyship, and defendant through its said Agency at Memphis, executed and delivered the same to plaintiff at its said office at Memphis, in said State, and said contract is a Tennessee contract and is governed by the laws of Tennessee and full faith and credit must be given thereto in the courts of this State under and in accordance with the requirements of article 4, Section 1; Article 1, Section 10 and Section 1 of the Fourteenth Amendment of the Constitution of the United States, and there was not then [fol. 53] and there is not now any statute in the State of Tennessee that prohibits and renders invalid the condition or limitation in said contract hereinafter mentioned, and the highest court of the State of Tennessee, to-wit, the Supreme Court, has held and announced as the law in Tennessee in a number of its decisions, to-wit, Guthrie v. Indemnity Association, 101 Tenn. 643; Phoenis Cotton Oil Co. v. Royal Indemnity Co., 140 Tenn. 438, City of Bristol v. Bostwick, 146 Tenn. 205, and other cases, that such conditions or limitations in such contracts are valid and binding; and said contracts of suretyship herein sued upon provided that any claim thereunder must be duly made upon the defendant, the surety, within fifteen (15) months after the termination of the suretyship for the defaulting employee, and plaintiff did not make claim for its loss upon defendant, the surety, within fifteen (15) months after the termination of its suretyship for said defaulting employee, Harris, in that said contract of suretyship was canceled and thereby terminated December 31, 1929, and plaintiff did not make claim upon defendant until June 22, 1931; and this defendant is ready to verify.

Wm. M. & Wm. G. Hall, Attorneys for Defendant.

[File endorsement omitted.]

[fol. 34] IN CIRCUIT COURT FIRST JUDICIAL DISTRICT OF BOLIVAR COUNTY, MISSISSIPPI

[Title omitted]

DEMURRER—Filed Aug. 3, 1932

Now comes the plaintiff, and as to the plea of the defendant by it above pleaded, says that the same and the matters therein contained, in manner and form as the same are above pleaded, are not sufficient in law to bar it, the plaintiff, from having its aforesaid action, and that it is not bound by law to answer the same, and for cause of demurrer the plaintiff shows to the Court:

1. The construction and validity of the provision in the contract requiring that any claim thereunder must be duly made upon the defendant, the surety, within fifteen (15) months after the termination of the suretyship for the defaulting employee is not determined by the laws of the State of Tennessee but is determined by the laws of the State of Mississippi.

2. The Statute of Limitations of the State where the suit is brought is the Statute of Limitations which governs the time within which actions must be brought, and the provision in the contract requiring that any claim thereunder must be duly made upon the defendant, the surety, within fifteen (15) months after the termination of the suretyship for the defaulting employee is in violation of Section [fol. 35] 2294 of the Mississippi code of 1930 (Section 2491 of Hemingway's 1917, Code of Mississippi), and in violation of the public policy of the State of Mississippi, and the Courts of this State are not required to give full faith and credit to said provision under and in accordance with the requirements of Article 4, Section 1; Article 1, Section 10 and Section 1 of the Fourteenth Amendment of the Constitution of the United States as contended in defendant's said plea.

Wherefore, for want of sufficient plea in this behalf, the plaintiff prays judgment and its damages, etc., to be adjudged to it, etc.

Sillers & Roberts, Attorneys for Plaintiff.

[File endorsement omitted.]

[fol. 36] IN CIRCUIT COURT OF BOLIVAR COUNTY

No. 6500

DELTA & PINE LAND COMPANY OF MISSISSIPPI

vs.

HARTFORD ACCIDENT & INDEMNITY COMPANY

JUDGMENT—Oct. 18, 1932

This cause coming on this day to be heard upon the declaration, plea, and plaintiff's demurrer to the plea, and the Court having heard argument of counsel and being sufficiently advised, doth order and adjudge that the said demurrer be, and the same is, hereby sustained, and the defendant declining to plead further, it is therefore ordered by the Court that judgment by default be, and the same is, hereby rendered in favor of the plaintiff, Delta & Pine Land Company of Mississippi, a Mississippi Corporation, against the defendant, Hartford Accident & Indemnity Company, a Connecticut Corporation, and a writ of inquiry having been called for, the same was issued by the Court and properly served and returned in the manner as provided by law, and in response thereto there came into Court a jury of good and lawful men composed of J. A. Wherry and eleven others, who being duly qualified, impaneled and sworn to diligently inquire into what damages the said plaintiff has sustained, and to well and truly try and determine all matters presented between the plaintiff and the defendant, and the jury having heard the evidence offered in open Court and argument of counsel, and having received the instructions from the Court, retired to consider their verdict and returned into open Court the following verdict:

"We, the Jury find for the plaintiff in the sum of $2,703.79, with interest from August 27, 1931 at the rate of 6% per annum to date of payment."

[fols. 37-45] Whereupon, it is therefore considered by the Court and so ordered and adjudged that the plaintiff, Delta & Pine Land Co., of Mississippi, do have of and recover from the defendant, Hartford Accident & Indemnity Company, the sum of $2,703.79, with 6% interest thereon from

the 27th day of August, A. D. 1931 to date of payment, together with all costs in this behalf incurred, for all of which let execution issue.

To all of which action of the Court the defendant excepted, and upon application duly made an appeal is hereby granted, to the defendant upon its entering into bond as required by law.

Ordered and adjudged on this, the 18th day of October, A. D. 1932.

[fol. 46] IN SUPREME COURT OF MISSISSIPPI

No. 6500

HARTFORD ACCIDENT & INDEMNITY COMPANY, Appellant,

versus

DELTA & PINE LAND COMPANY, Appellee

ASSIGNMENT OF ERRORS—Filed Jan. 30, 1933

Now comes Hartford Accident & Indemnity Company and assigns the following error in the action of the Circuit Court in this case, to-wit:

The Court erred in sustaining the Demurrer of the Delta & Pine Land Company to its Plea and rendering judgment against it, because the provision of the bond requiring claim thereunder to be made within fifteen (15) months after termination of the contract of suretyship, which the Delta & Pine Land Company did not comply with, was valid under the law of Tennessee; and the law of Tennessee, and not the law of Mississippi, governed and the Courts of Mississippi had to give full faith and credit thereto, and could not apply its statute (2294, Code 1930) in view of Article 4, Section 1; Article 1, Section 10; and Section 1 of the 14th Amendment, of the Constitution of the United States.

Wherefore it prays that said judgment be reversed and proper judgment entered here.

(Signed) Wm. M. & Wm. G. Hall, Counsel for Hartford Accident & Indemnity Company.

[fol. 47] I, Wm. M. Hall, one of counsel for Hartford Accident & Indemnity Company, hereby certify that I have

this day mailed, postage prepaid, to counsel for Delta & Pine Land Company, Sillers & Roberts, at Rosedale, Mississippi, a true copy of the foregoing Assignment of Errors.

Memphis, Tennessee, this the 28 day of January, A. D. 1933.

(Signed) Wm. M. Hall, of Counsel for Hartford Accident & Indemnity Company.

[File endorsement omitted.]

[fol. 48] IN SUPREME COURT OF MISSISSIPPI

Division A: McGowen, J.

No. 30,445

HARTFORD ACCIDENT & INDEMNITY COMPANY

vs.

DELTA & PINE LAND COMPANY

OPINION—Filed Oct. 9, 1933

A judgment was recovered against Hartford Accident & Indemnity Company, the appellant, in a suit based on a declaration filed by the Delta & Pine Land Company upon a fidelity bond covering officers and employees of the Delta & Pine Land Company for various sums set opposite the names of these officers and employees in a schedule attached to the bond and known as a Fidelity Schedule Bond. The appellant was at the date of the contract, and since, authorized to do business in this state, and subject to process therein.

The appellee, Delta & Pine Land Company, sought to recover $2,703.79 because of the alleged default of H. H. Harris, listed in all the schedules as the treasurer of the appellee at Memphis, Tennessee, and whose fidelity was indemnified by the Hartford Accident & Indemity Company in the sum of $25,000.00. The contract of indemnity was amended from time to time, but at all times it appeared that H. H. Harris, Treasurer, was located at Memphis, Tennessee.

In the declaration it was alleged that subsequent to the contract of indemnity the Delta & Pine Land Company removed its office from Memphis, Tennessee, to Scott, Mississippi. The defalcations of Harris, the treasurer, for which liability was sought to be enforced against the in-[fol. 49] demnity company, were alleged to have occurred on various dates between May 9, 1929 and September 20, 1929, and all occurred in Bolivar County, Mississippi. It was further alleged that the appellee discovered these defalcations on May 24, 1931, and immediately gave notice thereof to the appellant, and within three months thereafter filed with the appellant at its home office at Hartford, Connecticut, affirmative proof of its loss, and brought its suit within twelve months of the filing of the proof of loss. The schedule shows employees covered by the fidelity bond at Memphis, Tennessee, Scott, Lamont, Deeson, Estill and Lake Cormorant, Mississippi. It furthers appears from the contract that the appellant indemnified the appellee, or the loss to it, for a specific sum as to each employee, as, for instance, H. H. Harris, Treasurer, Memphis, Tenn., $25,000.00.

The bond contained the following provision:

"Any claim hereunder must be duly made upon the surety within fifteen (15) months after the termination of the suretyship for the defaulting employee, and no suit, action, or proceeding shall be brought hereunder by the employer against the surety after the expiration of twelve (12) months after the filing of proof of loss as above required, or, in case such limitation be void under the law of the place governing construction hereof then within the shortest period of limitation permitted by such law."

The bond also contained the following provision:

"The Hartford Accident and Indemnity Company, (hereinafter called Surety), in consideration of an agreed premium, binds itself to pay to Delta & Pine Land Co., of Mississippi, and/or Delta Farms Co., and/or Empire Plantation Co. (as their interest may appear) (hereinafter called the Employer), within sixty (60) days after satisfactory proof thereof, such pecuniary loss as the Employer shall have sustained of money or other personal property (including money or other personal property for which the

[fol. 50] Employer is responsible) through the fraud, dishonesty, forgery, theft, embezzlement, wrongful abstraction or wilful misapplication committed directly or in connivance with others by any of the employees named upon the schedule attached hereto and made a part hereof, in any position, anywhere, during the period commencing with the respective dates set opposite the names of the employees in such schedule, and ending with the termination of the suretyship for any employee by his dismissal or retirement from the service of the Employer, by the discovery of loss, hereunder, or by cancellation by the Employer or the Surety."

The appellant filed the following plea:

"Now comes Hartford Accident & Indemnity Company and for plea says that plaintiff should not have its action because plaintiff before and at the date of the contract of suretyship herein sued upon was doing business in the State of Tennessee and had its principal office at Memphis, in said State, and defendant was also then, as it is now, doing business in the State of Tennessee and had an Agency at Memphis, in said State, and plaintiff through its said office at Memphis, in said State, applied to defendant through its said Agency at Memphis, in said State, for said bond, rider and schedules containing the name of the defaulting employee, H. H. Harris, constituting said contract of suretyship, and defendant through its said Agency at Memphis, executed and delivered the same to plaintiff at its said office at Memphis, in said State, and said contract is a Tennessee contract and is governed by the laws of Tennessee and full faith and credit must be given thereto in the courts of this State under and in accordance with the requirements of Article 4, Section 1; Article 1, Section 10, and Section 1, of the Fourteenth Amendment of the Constitution of the United States, and there was not [fol. 51] then and there is not now any statute in the State of Tennessee that prohibits and renders invalid the condition or limitation in said contract hereinafter mentioned, and the highest court of the State of Tennessee, to-wit, the Supreme Court, has held and announced as the law in Tennessee in a number of its decisions, to-wit, Guthrie v. Indemnity Association, 101 Tenn. 643, Phoenis Cotton Oil

Co. v. Royal Indemnity Co., 140 Tenn. 438; City of Bristol v. Bostwick, 146 Tenn. 205, and other cases, that such conditions or limitations in such contracts are valid and binding; and said contracts of suretyship herein sued upon provided that any claim thereunder must be duly made upon the defendant, the surety, within (15) months after the termination of the suretyship for the defaulting employee, and plaintiff did not make claim for its loss upon defendant, the surety, within fifteen (15) months after the termination of its suretyship for said defaulting employee, Harris, in that said contract of suretyship was canceled and thereby terminated December 31, 1929, and plaintiff did not make claim upon defendant until June 22, 1931; and this defendant is ready to verify."

To this plea the appellee filed a demurrer on the ground that the construction and validity of the provision requiring claim thereunder to be made within fifteen months after the termination of the suretyship for the defaulting employee was not to be determined by the laws of Tennessee, but by the laws of Mississippi, and that this provision violated Section 2294 of the Mississippi Code of 1930 and the public policy of Mississippi; and further that the courts of Mississippi were not required to give full faith and credit thereto under and in accordance with Article 4, Section 1; Article 1, Section 10; and Section 1 of the Fourteenth Amendment of the Constitution of the United States.
[fol. 52] The court sustained the demurrer to this plea, the Indemnity Company declined to plead further, and thereupopn judgment was rendered against it for the defalcation of Harris.

It is to be conceded that under the adjudicated decisions of the Supreme Court of Tennessee, cited in the plea, the provision for notice of fifteen months is a limitation of liability and not a limitation of action. The converse is true in Mississippi, and the provision is a limitation of the action in this case, our statute of limitation being for six years, Section 2294, Code 1930. Sovereign Camp, W. O. W. vs. Miller, 125 Miss. 502, 87 So. 892; Standard Accident Insurance Co. vs. Broom, 111 Miss. 409, 71 So. 653; Illinois Central R. R. Co. vs. Jordan, 108 Miss. 140, 66 So. 406; General Accident, Fire and Life Ins. Co. vs. Walker, 99 Miss. 404, 55 So. 404, 55 So. 51; Dodson vs. Western Union Telegraph

Co., 97 Miss. 104, 52 So. 693. The cases of Berry vs. Lamar Life Ins. Co., 165 Miss. 405, 142 So. 445, and New York Life Ins. Co. vs. Alexander, 122 Miss. 813, 85 So. 93 are clearly differentiated from the others cited above, and in the case of Berry vs. Lamar Life Ins. Co., supra, it is pointed out that the limitation there under review was a condition precedent to the liability imposed upon the insurance company, and not a limitation upon the time in which the action should be brought.

Viewing the contract as a whole, there is no question but that this fidelity bond, or indemnity contract, was entered into and consummated in the State of Tennessee, where the Delta & Pine Land Company had its office and also the agent of the Indemnity Company had its office. The policy was delivered there, and so far as the language of the contract is concerned, as set forth in the statement of facts, this contract was a Tennessee contract. A contract is made at the [fol. 53] time when the last act necessary for its formation is done, and at the place where that final act is done. American Law Institute's Restatement of Law, Conflict of Laws, Tentative Draft No. 4, Sections 370 and 371. Couret vs. Conner, 118 Miss. 374, 392, and authorities there cited. And where the contract is silent, the place of the making of the contract is presumed to be the place of performance,—in this case the payment by the indemnity company of any default of any of the employees of the appellee. See Jones vs. Perkins, 29 Miss. 139, 64 Am. Dec. 136.

But clearly under Section 5131, Code 1930, defining insurance, this indemnity bond is a contract of insurance within the purview of that statute; and, further, it being expressly provided therein that all contracts of insurance on property, lives or interests in this state shall be deemed to be made therein, in our judgment, makes the contract herein under review a Mississippi contract and solvable under the laws of this state. The contract here provided or stipulated that the appellee should be indemnified from loss by the defalcation of H. H. Harris in any position anywhere, and when he, the employee and the insured herein, removed to Mississippi and there defaulted, so far as the appellee is concerned its interest was insured or indemnified by the appellant in Mississippi, and, under the provision quoted from the above statute, became operative, and this state is obligated to enforce it, as a Mississippi contract,

although it contained all the elements necessary to make it a Tennessee contract, but for the statute.

This court is committed to the proposition that if lives or property is insured in this state, although the contract be made in another state, the contract is solvable under the laws of our own state. Fidelity Mutual Insurance Co. vs. [fol. 54] Miazza, 93 Miss. 18, 46 So. 817; Stuyvesant Ins. Co. vs. Smith Motor Sales Co., 135 Miss. 585, 99 So. 575. The contract of indemnity in the case at bar, in our opinion, permitted the removal of employees to any place and indemnified against loss wheresoever it occurred. There being an interest of the appellee indemnified, and the employee having removed to Mississippi and his defalcation having occurred therein, whereby the appellee sustained a loss, and under the terms of the contract no notice of said removal being required, the contract became an indemnity contract against loss of interest of the appellee in this state. When the statute declares that such a contract shall be deemed to be made in this state, it means that the conflict of law between the two states is eliminated, and thereby, under the above authorities, a contract for fifteen months' notice was a limitation of the action enforceable as such in this state.

Affirmed.

[File endorsement omitted.]

[fol. 55] In Supreme Court of Mississippi

No. 30445

Hartford Accident & Indemnity Company

vs.

Delta & Pine Land Company

Judgment—Oct. 9, 1933

This cause having been submitted at a former Term of this court on the record herein from the Circuit Court of Bolivar County and this court having sufficiently examined and considered the same and being of the opinion that there

is no error therein doth order and adjudge that the judgment of said Circuit Court rendered in this cause on the 18th day of October 1932, be and the same is hereby affirmed. It is further ordered and adjudged that the appellee do have and recover of and from the appellant and United States Fidelity & Guaranty Company, surety on the supersedeas appeal bond herein the sum of $2,703.79 the amount of the judgment in the court below together with interest at the rate of 6 per centum per annum from the 27th day of August 1931 until paid, also the further sum of $142.95 being damages at the rate of 5 per centum as allowed by statute, also all of the costs of this court and in the court below to be taxed, etc.

[fol. 56] IN SUPREME COURT OF MISSISSIPPI

[Title omitted]

SUGGESTION OF ERROR OF HARTFORD ACCIDENT AND INDEMNITY COMPANY—Filed Oct. 23, 1933

Appellant Hartford Accident & Indemnity Company respectfully suggest that—

1. The court erred in its decision in holding that Section 5131 and Section 2294 of the Mississippi Code of 1930 are applicable to the contract of insurance in suit, because in so holding those statutes are made to violate the due process clause, (Art. 1, Sec. 10); the full faith and credit clause, (Art. 4, Sec. 1); and the contract impairment clause, (14th Amendment, Art. 14; Sec. 1), of the Constitution of the United States; and

2. The court erred in holding that the contract of insurance in suit was on an interest in the State of Mississippi.

Wherefore, it prays that the court withdraw its opinion, reconsider its decision, set aside its judgment of affirmance and reverse the judgment of the Circuit Court and enter judgment here accordingly.

(Signed) Wm. M. & Wm. G. Hall, Counsel for Appellant.

[fol. 57] I hereby certify that I have this day mailed, postage prepaid, to Sillers & Roberts, Rosedale, Mississippi,

counsel for appellee, a true copy of the foregoing Suggestion of Error.

Memphis, Tennessee, this the 21 day of October, A. D. 1933.

(Signed) Wm. M. Hall, of Counsel for Appellant.

[File endorsement omitted.]

[fols. 58-61] In Supreme Court of Mississippi

[Title omitted]

Order Overruling Suggestion of Error Nov. 6, 1933

This cause this day came on to be heard on the suggestion of error filed herein and this court having sufficiently examined and considered the same and being of the opinion that the same should be overruled, doth order and adjudge that said suggestion of error be and the same is hereby overruled.

[fol. 62] [File endorsement omitted]

In Supreme Court of Mississippi

[Title omitted]

Assignment of Errors—Filed Nov. 15, 1933

Appellants, Hartford Accident & Indemnity Company and United States Fidelity & Guaranty Company, assign the following errors in the record and proceedings in above entitled cause, to-wit:

I

The Supreme Court of Mississippi erred in holding that under Section 5131 of the Mississippi Code of 1930 that the bond or policy of insurance sued upon, made and to be performed in Tennessee, was to be deemed to have been made in Mississippi and solvable under the laws of Mississippi because upon an interest in Mississippi; and therefore under Section 2294, Mississippi Code of 1930 the pro-

vision of said bond or policy that claim thereunder must be made upon the surety within fifteen months after termination of the suretyship, valid under the laws of Tennessee, was null and void because in conflict with the limitation on actions upon such contracts prescribed by the laws of Mississippi, in that said statutes in such construction and application were made repugnant to Article XIV, Section 1 and Article IV, Section 1 of the Constitution of the United States.

II

The Supreme Court of Mississippi erred in holding that the bond or policy sued upon was upon an interest in the State of Mississippi.

[fols. 63-69] For which errors they pray that the decision and judgment of the Supreme Court of Mississippi rendered on the 9th day of October 1933 in the above-entitled cause be reversed and that judgment be rendered in their favor.

Wm. M. Hall, Counsel for Appellants.

[fol. 70] [File endorsement omitted]

IN SUPREME COURT OF MISSISSIPPI

[Title omitted]

ORDER ALLOWING APPEAL TO SUPREME COURT OF UNITED STATES—Filed Nov. 15, 1933

Petition of Hartford Accident & Indemnity Company and United States Fidelity & Guaranty Company for appeal of the above case to the Supreme Court of the United States from the Supreme Court of the State of Mississippi, Assignment of Errors filed therewith and Statement disclosing the basis upon which it is contended that the Supreme Court of the United States has jurisdiction upon appeal to review the judgment of the Supreme Court of Mississippi therein, and the record of said cause, having been considered; it is ordered that an appeal be and is hereby allowed as prayed in said petition, and that petitioners shall give good and sufficient security in the sum of Fifty Six Hundred, Ninety Three and Forty Eight One

Hundredths Dollars ($5693.48) that said appellants shall prosecute said appeal to effect and if they fail so to do shall answer for all damages and costs, and petitioners now presenting a bond in the sum of $5693.48 with Fidelity & Deposit Company of Maryland, of Baltimore, Maryland, as surety, so conditioned, it is ordered that the same be and is hereby approved; and that the Clerk of the Supreme Court of Mississippi shall prepare and certify a transcript of the record and proceedings in the above cause and transmit the same to the Supreme Court of the United States within forty days from the date hereof.

[fols. 71–85] It is further ordered that said appeal shall operate as a supersedeas.

This the 15th day of November, A. D. 1933.

Sydney Smith, Chief Justice of the Supreme Court of Mississippi.

[fol. 86] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION OF THE PARTS OF THE RECORD TO BE PRINTED—Filed Dec. 13, 1933

Now come Hartford Accident & Indemnity Company and United States Fidelity & Guaranty Company, Appellants in above styled cause, and adopt their Assignments of Error as their statement of the points to be relied upon, and state that only the following parts of the record as filed in this court are deemed necessary to be printed for the consideration of those points, viz:

1. Title of Case.
2. Declaration and the following exhibits:

Exhibit "A" (Schedule Bond with Schedule of Employees).

Exhibit "B" (Rider to Bond).

Exhibit "C" (Schedule Bond—Employees of Delta & Pine Land Company of Mississippi and/or Delta Farms and/or Empire Plantation Company).

Exhibit "D" (Acceptance of change in Schedule of Employees).

Exhibit "E" (Acceptance of change in Schedule of Employees).

3. Plea of Hartford Accident & Indemnity Company.
4. Demurrer of Delta & Pine Land Company of Mississippi.
5. Judgment of Circuit Court.
[fol. 87] 6. Assignment of Errors in the action of the Circuit Court.
7. Opinion Supreme Court of Mississippi, Division A, McGowen, J.
8. Judgment of the Supreme Court of Mississippi.
9. Suggestion of Error of Hartford Accident & Indemnity Company.
10. Judgment of the Supreme Court of Mississippi overruling Suggestion of Error.
11. Assignment of Errors of Hartford Accident & Indemnity Company and United States Fidelity & Guaranty Company in appeal from the judgment of the Supreme Court of Mississippi to the Supreme Court of the United States.

This the 8th day of December, A. D. 1933.

Wm. M. Hall, Counsel for Appellants.

Service of above is hereby acknowledged, this the 8th day of December, A. D. 1933.

Garner W. Green, Counsel for Appellee.

[fol. 88] [File endorsement omitted.]

Endorsed on cover: File No. 38,253. Mississippi Supreme Court. Term No. 650. Hartford Accident & Indemnity Company and United States Fidelity & Guaranty Company, appellants, vs. Delta & Pine Land Company. Filed December 13, 1933. File No. 650, O. T., 1933.

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